

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK
ROCHESTER DIVISION

THE UNITED STATES OF AMERICA,

-versus-

DOCKET NO: 17-CR-6074

CARL L. BURDICK,

Defendant.

TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE CHARLES J. SIRAGUSA
UNITED STATES DISTRICT JUDGE
TUESDAY, MAY 17, 2018

A p p e a r a n c e s:

On Behalf of the Government:

Kyle Rossi, Assistant US Attorney

On Behalf of the Defendant:

Anne Burger, Esq.
Defendant present

On Behalf of Probation:

Jessica Rider

R e p o r t e d B y:

Briana L. Jeffords

1 THE COURT: For the record, this is the matter of
2 the *United States versus Carl Burdick*.

3 Good morning, Mr. Burdick.

4 THE DEFENDANT: Good morning, your Honor.

10:47:45AM 5 THE COURT: You are appearing with your attorney,
6 Ms. Burger; is that correct?

7 THE DEFENDANT: Yes, your Honor.

8 MS. BURGER: Judge, would it be okay if Mr. Burdick
9 is seated during the proceeding?

10:47:52AM 10 THE COURT: Absolutely.

11 MS. BURGER: Thank you.

12 THE COURT: Mr. Rossi is here on behalf of the
13 Government. And if my memory serves me correctly, it's Mr.
14 and Mrs. Martin; is that correct? You are welcome to be here.

10:48:01AM 15 This is a continuation of the sentencing.
16 Mr. Burdick, the Court would intend to pick up where we left
17 off unless anyone has an objection to that.

18 MS. BURGER: That's fine.

19 THE COURT: I certainly went through all of the
10:48:15AM 20 preliminaries last time.

21 I recall the issue you raised, Ms. Burger, was
22 about any truth verification provision. The Court ordered
23 your recommendations that would apply to the one suggested
24 because that was the product of some effort on the part of the
10:48:30AM 25 Court.

1 Where we left off -- and is that acceptable with
2 you, Mr. Burdick, if we just pick up where we left off?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Mr. Rossi, is that acceptable to the
10:48:47AM 5 Government?

6 MR. ROSSI: Yes, Judge.

7 THE COURT: And here is where we left off. I was
8 going through the sentencing factors. And the Court did go to
9 the mention of the sentencing -- one of the sentencing
10:49:00AM 10 factors. I indicated I considered all of the sentencing
11 factors, the nature and circumstances of the offense and the
12 history and characteristics of the defendant. And in that
13 regard, I referred to paragraph 84 of the Presentence
14 Investigation Report which details a prior incident with a
10:49:26AM 15 14-year-old girl. I won't repeat it, but I essentially read
16 from paragraph 84. And I thought -- and I indicated that was
17 certainly relevant, in my mind, on the defendant's
18 characteristics.

19 At that point, Ms. Burger, you were concerned that
10:49:43AM 20 might somehow impact the sentence. That you had not
21 specifically had an opportunity to address that. We had a
22 discussion about if it was contested, then the Court, pursuant
23 to directions at his sentencing hearing, didn't need to
24 conduct a full blown evidentiary hearing. It was disputed,
10:50:07AM 25 could rely on, without a term, reliable hearsay. That's the

1 point, I think what Mr. Rossi indicated, there was an
2 affidavit that had been obtained from the 14-year-old victim
3 in the prior case. The Court -- Mr. Rossi indicated it had
4 not been provided to the Court, but it had been provided to
10:50:26AM 5 the defense. You indicated that you wanted a chance to
6 discuss this with Mr. Burdick to see if he wanted to contest
7 what was set forth in paragraph 84 or what was set forth in
8 the affidavit. We received nothing. So I assume Mr. Burdick
9 does not want to contest that.

10:50:44AM 10 MS. BURGER: Let me, I guess, fill the Court in a
11 bit. Obviously, I was not the issue attorney on the case.
12 And I began representing Mr. Burdick after Mr. Smith retired
13 and that was between plea and sentence. I would note that
14 very early on in the case the affidavit which is, in my view,
10:51:00AM 15 essentially summarized in its important respects in the PSR,
16 each of the versions of the PSR, was provided to Mr. Smith.

17 Since we last appeared, I had the opportunity to
18 have someone from my office speak to the victim in that case,
19 interview her, speak to her, speak to her mother, and I have
10:51:19AM 20 been able to satisfy myself with respect to her account. And
21 I have conveyed that to Mr. Burdick. And in these
22 discussions, the fruit of the discussions are that Mr. Burdick
23 has decided that he does not wish me to lodge an objection.
24 It is understood that the Court will take that information in
10:51:41AM 25 that paragraph as fact since we are not opposing it, but

1 that's what's happened since we were last here.

2 THE COURT: Is that correct, Mr. Burdick?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Thank you very much. Then we can
10:51:53AM 5 proceed. As I was pointing out at the time that we adjourned
6 sentencing, I have taken into consideration all of the factors
7 as required in 18 USC Section 3553 including, of course, as I
8 said, the nature and circumstances of the offense, your
9 history and characteristics including paragraph 84 was
10:52:15AM 10 detailed by the Court. I have considered the need for the
11 sentence imposed to reflect the seriousness of the offense.

12 Obviously, it goes without saying that this was a
13 serious crime as contained in the chapter of the federal laws
14 book of sexual exploitation of children. And this clearly was
10:52:36AM 15 egregious conduct involving a 15-year-old child.

16 I have considered the need for the sentence imposed
17 to promote respect for the law to provide you with a just
18 punishment. I have considered the importance of imposing a
19 sentence that affords an adequate deterrence to criminal
10:52:55AM 20 conduct. In other words, hopefully, it makes anyone in the
21 community who pays attention to this proceeding say you can't
22 engage in this kind of conduct or you face the penalties.

23 I have considered the sentence needed to protect
24 the public from further crimes on your part. I have
10:53:11AM 25 considered what is the appropriate sentence to provide you

1 with whatever care, treatment, and training you need in the
2 most effective manner. I have considered the need to avoid
3 unwarranted sentencing disparities among defendants with
4 similar records and found guilty of similar conduct.

10:53:27AM 5 I have considered the issue of restitution.
6 Although that is not an issue in this case; is that right,
7 Mr. Rossi?

8 MR. ROSSI: That's correct, Judge.

9 THE COURT: And I have considered the sentences
10 available. I have considered the sentences available under
11 the statute. I know that under the statute I can impose a
12 sentence of life imprisonment. And of course, I have
13 considered the sentences recommended under the advisory
14 sentencing guidelines.

10:54:02AM 15 As to the Second Circuit's direction and in
16 accordance with the Crosby and Gonzalez cases, I made the
17 following findings which allowed me to properly consider the
18 advisory sentencing guidelines along with all of the
19 sentencing factors.

10:54:17AM 20 I have determined that your base offense level is
21 28, but there should be increases. A two-level increase
22 pursuant to Guideline Section 2G1.3(b)(1)(B) because the minor
23 involved was otherwise in your care, custody, or control.
24 Obviously, we have the trips -- the trip to Montana among
10:54:46AM 25 other things.

1 I have determined there should be a two-level
2 increase pursuant to Guideline Section 2G1.3(b)(2)(B) because
3 the minor was unduly influenced by you to engage in prohibited
4 sexual conduct.

10:55:09AM 5 Another two-level increase because the offense
6 involved the use of a computer. That's pursuant to Guideline
7 Section 2G1.3(b)(3)(A).

8 Another two-level increase because the offense
9 involved the commission of a sexual act. That is pursuant to
10:55:32AM 10 Guideline Section 2G.3(b)(4)(A).

11 If you add up these increases, that's 28 and 2
12 takes you to 30. Another 2 takes you to 32. Another 2 takes
13 you to 34. Another 2 takes you to 36. And then we have --
14 pursuant to -- that takes you to a 36. However, there is that
10:56:04AM 15 five-level increase pursuant to Guideline Section 4B1.5(B)
16 involving that pattern of activity involving prohibited sexual
17 conduct. That enhancement takes you to a 41.

18 While these were not specifically the numbers
19 agreed to in the plea agreement and there has been much
10:56:37AM 20 discussion about that, these are the numbers recommended by
21 Ms. Rider in the Presentence Report. This is what the Court
22 finds. And there has been really no objection to these
23 findings. There has been edification to the Guidelines
24 contained in the plea agreement, but no objection to these
10:56:58AM 25 findings.

1 However, I do believe based on the information that
2 Ms. Burger has brought to my attention on your behalf that you
3 are entitled to a three-level reduction for acceptance and
4 responsibility which takes you down to a 38.

10:57:23AM 5 Your criminal convictions resulted in a Criminal
6 History Category 1 which is actually the lowest. And with a
7 criminal history of 1 and an offense level of 38, the
8 recommended range under the advisory guidelines is 235 months
9 to 293 months in prison. Now, 235 months is 19 years 7
10 months. 293 months is 24 years and 5 months.

11 The recommended period of the supervised release is
12 five years to life. Probation is not recommended. Fine range
13 recommended is \$25,000 to \$250,000. Restitution is not an
14 issue. And there is no dispute that Mr. Burdick is indigent;
10:58:33AM 15 is that correct? So the only assessment would be the \$100
16 special assessment.

17 MR. ROSSI: That's correct, Judge.

18 THE COURT: So there would be no additional \$5,000
19 assessment; is that right, Mr. Rossi?

10:58:45AM 20 MR. ROSSI: Correct.

21 THE COURT: So these would be my options under the
22 advisory guidelines. These are the recommendations. Now,
23 this is an unusual case because the -- while the plea
24 agreement precluded either you or the Government from arguing
10:59:25AM 25 for sentence outside of the guidelines calculated in the plea

1 agreement, these are a different guideline sentence.

2 So pursuant to the plea agreement and the authority
3 of the plea agreement, Ms. Burger has argued for a sentence of
4 135 months, just so we are on all squares. That's perfectly
10:59:52AM 5 permissible based on the plea agreement; is that right,
6 Mr. Rossi?

7 MR. ROSSI: Yes, Judge.

8 THE COURT: To get there, therefore, I would have
9 to either depart downward under the guidelines or give a
11:00:06AM 10 non-guideline sentence. So based on the landscape of this
11 case, the Court is considering Ms. Burger's request as either
12 a request for a departure within the guideline analysis or a
13 non-guideline sentence considering all of the factors.

14 Let's start off with the guideline analysis because
11:00:31AM 15 whenever a sentence is made -- a request is made for a
16 sentence below the guideline range, the Court is obligated to
17 do two things. First, I have to determine whether within the
18 guidelines, which are one of the sentencing factors, if there
19 is any basis for a downward departure. Then I have to
11:00:52AM 20 consider, apart from that, whether there is any basis for a
21 non-guideline sentence.

22 The distinction is that on a departure, based on
23 the guidelines, you are considering one of the sentencing
24 factors, the guidelines. And a non-guideline sentence you are
11:01:08AM 25 considering all of the sentencing factors I just went through.

1 With respect to a non-guideline sentence, Ms.
2 Burger makes an argument that 4B1.5(B) -- couple arguments, it
3 is not based on any empirical data. An argument that kind of
4 stems from the Darby case which suggests that some of the
11:02:44AM 5 2G1.2 factors should not be roguery applied.

6 The Court is certainly aware of Darby. Let me just
7 digress and say that this is obviously not a Darby case. For
8 one thing, the maximum here is life. For another, this is a
9 case where, Mr. Burdick, you acted out. But the other
11:03:07AM 10 argument Ms. Burger makes is, really this was not intended for
11 someone like you. She suggests that this pattern was designed
12 to get repeat offenders not someone who with a victim, the
13 same victim, for the same offense engages in instances of
14 sexual activity. I think the problem with that argument is
11:03:44AM 15 4B1.5(A) which says in any case in which a defendant's instant
16 offense of conviction is a covered sex crime, 4B1.1, the
17 career offender statute, does not apply, and the defendant
18 committed the instant offense of conviction subsequent to
19 sustaining at least one sex offense conviction. I think 4B1.5
11:04:11AM 20 deals with individuals who commit a sex offense after
21 committing a previous sex offense. So the Court disagrees and
22 believes, based on the reading of 4B1.5, that you do fit.
23 This was designed for somebody who engages, even with one
24 victim, the pattern of sexual activity. And there is no
11:04:36AM 25 dispute that occurred here.

1 The Court understands fully that under a guideline
2 analysis it can depart. Even based on a policy disagreement,
3 if I disagreed with this, the Court has the ability to depart.
4 I don't disagree with it. I think it fits. But the Court
11:04:58AM 5 understands it has that discretion. The Court also
6 understands that it can depart, under the guideline analysis,
7 based on one factor or based on the combination of factors.
8 However, in your case, Mr. Burdick, the Court does not believe
9 that any factor individually, or in combination, or
11:05:22AM 10 background, or any of the factors that Ms. Burger raises would
11 justify a departure downward within the guideline analysis.
12 That, of course, does not end the inquiry.

13 Several of the points Ms. Burger makes in the
14 submission go to a non-guideline sentence. And again, the
11:05:45AM 15 distinction is that on a non-guideline sentence, the Court
16 considers all of the sentencing factors in Section 3553 and
17 determines whether or not, based on a consideration of all of
18 the factors, a non-guideline sentence is warranted.

19 I have done that. And on consideration of those
11:06:04AM 20 factors, I do not believe a non-guideline sentence is
21 warranted. And let me explain why. The nature of the offense
22 supports the requested sentence. It's one of the arguments
23 Ms. Burger makes, and I respectfully disagree. You knew you
24 were dealing with a child all along. The communications were
11:06:33AM 25 with a child. Now, she didn't know your age initially and she

1 later learned it. But you took advantage of the situation. I
2 recall -- when you pled guilty, I asked you this: "Explain to
3 me then why you would do something that you knew, kind of
4 everyone knows, is wrong." Your response: "I don't have any
11:07:04AM 5 excuses, your Honor. I truly love these people, her mom, her
6 dad. The Court: So you met her mom and dad? The Defendant:
7 Yes, I stayed in their home, spent the night in their home
8 with them." It speaks something of your character, and
9 perhaps lack thereof in my mind, Mr. Burdick, that you are
11:07:32AM 10 abusing their child and yet taking advantage of their
11 hospitality to stay in their home. So you know, I do not
12 believe that the nature of your offense supports 135 months.
13 I think quite the contrary. I think the nature of your
14 offense, if anything, supports or points to the higher end of
11:08:13AM 15 the guidelines.

16 Your background and characteristics, well quite the
17 contrary. I disagree with that too for the simple reason that
18 while Ms. Burger is arguing that your characteristics purport
19 a 135-month sentence and saying that I should take into
11:08:29AM 20 consideration your characteristics, I point to that other
21 offense with the 14-year-old child which I won't detail again.
22 But I think that clearly points to someone who is predatory in
23 nature. You took advantage of that child just like you took
24 advantage of the child in this case. So again, quite the
11:08:49AM 25 contrary from pointing to a non-guideline sentence. I think

1 it does just the opposite.

2 I don't believe -- Ms. Burger also argues that 135
3 months is sufficiently consistent with the sentencing factor
4 relating to the seriousness of the offense. Again, this
11:09:23AM 5 offense was calculated. It involved deceit. It involved
6 taking advantage of a child. It is indicative of someone who
7 is morally bankrupt to engage in this kind of conduct with a
8 15-year-old child.

9 So the Court, for the reasons I have stated and in
11:09:59AM 10 consideration of this argument, does not believe based on the
11 sentencing factors in 18 USC Section 3553 a non-guideline
12 sentence is appropriate. The Court believes to the contrary
13 that a guideline sentence is called for.

14 Now, what guideline sentence? Well, I think I can
11:10:24AM 15 clearly justify sentencing the top end of the guidelines, but
16 I am mindful of your age. Mr. Burdick, you are 59 years old.
17 While I understand that you get a good time credit and the
18 credit for the time you have in, the sentence for the lower
19 end of the guidelines will mean that you will stay in prison
11:10:47AM 20 until you're in your late 70s. Presumably, by that time any
21 predatory inclinations that you have for children would
22 hopefully be well, and I trust well, under control.

23 The Court has carefully considered all of the facts
24 and circumstances surrounding your conviction as well as the
11:11:20AM 25 objectives of sentencing as set forth in 18 USC Section 3553.

1 Pursuant to that section of law and pursuant to the Sentencing
2 Reform Act of 1984, it is the judgment of the Court that you,
3 Carl Burdick, are hereby committed to the custody of the
4 Bureau of Prisons to be in prison for a term of 240 months.
11:12:03AM 5 That is 20 years.

6 Because the guideline range exceeds 24 months, I'm
7 required to explain why that sentence -- well, again, while I
8 have said that I think the sentence at the top of the
9 guidelines based on the awful conduct that you engaged in
11:12:32AM 10 would be justified, I'm mindful of your age. Whether you make
11 it out of prison at all, I don't know. So I think a sentence
12 in consideration of all the sentencing factors, the obligation
13 to protect the public from further crimes on your part, the
14 responsibility to impose a just sentence, a sentence to
11:13:01AM 15 reflect the seriousness of what you did, all of the sentencing
16 factors call for a sentence at the lower end of the guidelines
17 of 240 months. And that's why I'm imposing that.

18 The Court does believe a sentence of 240 months,
19 considering all of the 18 USC Section 3553 factors, as they
11:13:26AM 20 apply to the facts and circumstances of this case, is the
21 sentence sufficient but not greater than necessary to comply
22 with those sentencing requirements.

23 Upon your release from imprisonment, you shall be
24 placed on supervised release for 10 years. Why 10 years?
11:13:43AM 25 Well, there is no magical formula I apply. However, I did

1 consider the sentencing factors set forth in 18 USC Section
2 3553. I am mindful of my responsibility to make sure you no
3 longer impose a threat to any children. And I believe that is
4 the sentence appropriate considering the 18 USC Section 3553
5 factors that is needed to make sure that no children are put
6 in danger. And therefore, I'm imposing that 10-year period of
7 supervised release.

8 Upon your release from imprisonment, you must
9 report to the probation office in the federal judicial
10 district where you are authorized to reside within 72 hours of
11 release from imprisonment unless the probation office
12 instructs you to report to a different probation office or
13 within a different timeframe.

14 While on supervised release, you shall not commit
15 another federal, state, or local crime. You are prohibited
16 from possessing a firearm, ammunition, or other dangerous
17 device. In addition, you shall not possess a controlled
18 substance and shall comply with the standard conditions that
19 are adopted by the Court.

20 You shall comply with the following special
21 conditions. Since the incident offense occurred after
22 September 13th, 1994, drug testing is required by the 1994
23 Crime Control Act. Additionally, you shall cooperate with the
24 collection of a DNA sample as required by the Justice for All
25 Act of 2004.

1 While on supervised release you shall not use or
2 possess any computer, data storage device, or any internet
3 capable device unless you participate in the computer and
4 internet monitoring program or unless authorized by the Court
11:15:33AM 5 or the US Probation Office. You must provide the US Probation
6 Office with advance notification of my computers, automated
7 services, or connective devices that will be used during the
8 term of supervision. The probation office is authorized to
9 install any applications necessary to surveil all activity on
11:15:55AM 10 any computers or connected devices which you own or operate.
11 You are required to pay the cost of monitoring services. The
12 US Probation Office shall be notified via electronic
13 transmission of impermissible, suspicious activity, or
14 communications occurring on such computer or connected device
11:16:14AM 15 consistent with the computer monitoring policy in effect by
16 the probation office. It is triggered by impermissible or
17 suspicious activity.

18 You shall consent to and cooperate with unannounced
19 examinations of any computer equipment which you own or use.
11:16:30AM 20 This examination shall include but is not limited to retrieval
21 and copying of all data from computers, connective devices,
22 storage media, and any internal or external peripherals and
23 may involve removal of such equipment for the purpose of
24 conducting a more thorough inspection. Any such monitoring or
11:16:47AM 25 examination shall be designed to avoid, as much as possible,

1 reading any privileged information or any private material
2 that is not illegal or reasonably likely to lead to illegal
3 material or evidence related to illegal activity.

4 You must participate in the sex offense specific
11:17:06AM 5 treatment program and follow the rules and regulations of the
6 program. The probation office will supervise the details of
7 your participation in the program including the selection of a
8 provider and schedule. You are not to leave treatment until
9 complete or as ordered by the Court. You are required to
11:17:22AM 10 contribute to the cost of services rendered.

11 Next, you shall not have deliberate contact with
12 any child under 18 years of age, excluding any of your own
13 biological or adopted children, unless approved by the
14 probation office or the Court.

11:17:40AM 15 You shall not loiter within 100 feet of
16 schoolyards, or playgrounds, or arcades, or other places
17 primarily used by children under the age of 18. The probation
18 office has discretion to authorize you to pick up, if you had
19 your own children, from school or other functions. However,
11:17:57AM 20 authorization must be obtained in advance from the probation
21 office or alternatively from the Court.

22 In order to monitor your compliance with not buying
23 or subscribing to online services that provide child
24 pornography, you shall provide the probation department with
11:18:14AM 25 access to any requested personal and/or business financial

1 information. You shall register with the state sex offender
2 registration in any state where you reside, or are employed,
3 carry on a vocation, or are a student and shall provide proof
4 of the registration to the probation office. The probation
11:18:31AM 5 office is authorized to release your presentence report to the
6 New York State Board of Examiners of Sex Offenders. Further
7 disclosure to the county court and the parties involved in
8 this determination of your final classification level is also
9 authorized.

11:18:48AM 10 You shall submit to a search of your person,
11 property, vehicle, place of residence, or other property under
12 your control based upon reasonable suspicion and permit
13 confiscation of any evidence or contraband discovered.

14 You shall submit to a polygraph, computerized voice
11:19:05AM 15 stress analyzer, or other such testing not to exceed twice
16 during a calendar year and an additional two retests per year
17 as needed. The test may include examinations using a
18 polygraph, computerized voice stress analyzer, or other
19 similar device to obtain information necessary for

11:19:25AM 20 supervision, case monitoring, or treatment. You shall answer
21 the questions posed during the examination subject to your
22 right to challenge in a court of law. The use of such
23 statements is in violation of your fifth amendment rights. In
24 this regard, you shall be deemed not to have waived your fifth
11:19:41AM 25 amendment rights by making such statements. The results of

1 any polygraph pretests or polygraph examinations shall be
2 disclosed to the US Probation Office and to the Court which
3 will not be further disclosed without a court order. You are
4 required to contribute to the costs of services rendered.

11:19:58AM 5 You are to participate in a mental health treatment
6 program including a mental health evaluation and any treatment
7 recommended. The probation office will supervise the details
8 of any testing and treatment including the selection of a
9 provider and the selection of and schedule -- excuse me. If
11:20:15AM 10 impatient treatment is recommended, however, it must be
11 approved by the Court unless you consent. You are not have
12 any -- you are not to leave such treatment until completion is
13 ordered by the Court.

14 While in treatment or taking any kind of
11:20:30AM 15 psychiatric medication, you shall abstain from the use of
16 alcohol. You are required to contribute to the cost of
17 services rendered.

18 I'm going to impose a \$1,000 fine. I find that you
19 have the ability to pay such a fine. Interest on the fine is
11:20:47AM 20 waived while incarcerated. If you are non-UNICOR or UNICOR
21 Grade 5, you shall pay in installments of 25 per quarter. If
22 you are assigned grades 1 through 4 in UNICOR, you shall pay
23 in installments of 50 percent of your monthly pay.

24 While in supervision, if that takes place, you can
11:21:00AM 25 make monthly payments at the rate of 10 percent of your

1 monthly grossly income if the fine is not paid.

2 The Court finds that you are indeed indigent and
3 cannot afford to pay the mandatory \$5,000 Justice for Victims
4 of Trafficking Act of 2015 assessment. However, you do have
11:21:17AM 5 to pay the mandatory special assessment of \$100 which is due
6 immediately. If you cannot pay it, then payments shall begin
7 on the Bureau of Prisons Financial Responsibility Program.
8 Payments shall be made to the Clerk of the United States
9 District Court, Attention: Finance, United States Courthouse,
11:21:40AM 10 2 Niagara Square, Buffalo, New York, 14202.

11 Ms. Rider, the mandatory drug testing requirement,
12 you are recommending that be waived?

13 MS. RIDER: No, I don't believe I was, your Honor.

14 THE COURT: I didn't see that.

11:22:07AM 15 MS. RIDER: You had previously read that. However,
16 reviewing the report, it looks like there would be no problem
17 if it were waived. I don't see any recent history of
18 substance abuse.

19 THE COURT: All right. The Court then will waive
11:22:28AM 20 the mandatory drug testing pursuant to the 1984 Crime Control
21 Act. I did indicate that it was imposed. But again, I just
22 want to make sure that you are in agreement, Ms. Rider, you
23 don't see any history of substance abuse?

24 MS. RIDER: That's correct, your Honor. I do not
11:22:51AM 25 see that.

1 THE COURT: So I will waive that. One of the
2 things I just want to remind you of, Mr. Burdick, is what we
3 discussed in the plea agreement. I don't know what will
4 happen in such point as you complete your sentence. As I
11:23:17AM 5 said, I don't know if you ever will complete the sentence
6 based on your age. However, if you do, I want to remind you
7 that because of your conviction, there may, in this action, it
8 may result in a civil commitment under Federal Law 18 USC
9 Section 4243. If it is determined you are a sexually
11:23:42AM 10 dangerous person, that would be handled by the Attorney
11 General's Office and that would occur in the judicial district
12 where you are serving your sentence.

13 Counsel, I'm just trying to recollect, pursuant to
14 Rule 32 of the Federal Rules of Criminal Procedure, the
11:26:57AM 15 defendant would have the right to appeal the sentence, is that
16 correct, based on the --

17 MS. BURGER: Yes, it is. And when the Court has
18 completed its remarks, I have some exceptions to make of
19 potential --

11:27:07AM 20 THE COURT: Certainly. First of all, pursuant to
21 the plea agreement and specifically pursuant to paragraph 25,
22 the defendant is forfeiting any interest he has in the Samsung
23 Galaxy cellular telephone specified. This is the sentence of
24 the Court.

11:27:45AM 25 And pursuant to Rule 32J of the Federal Rules of

1 Procedure, I'm informing you, Mr. Burdick, you have the right
2 to appeal the sentence I have imposed. If you can't afford
3 your own lawyer, you are entitled to seek to appeal as a poor
4 person, but the procedure, at least in this district, is that
11:28:10AM 5 Ms. Burger or someone in her office will handle the appeal for
6 you. Do you understand that?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: Go ahead, Ms. Burger.

9 MS. BURGER: Thank you, Judge. I would like to
11:28:19AM 10 interpose an objection with respect to the prison portion of
11 the sentence that was imposed.

12 As the first point, I would argue that the Court
13 placed undue emphasis on the guidelines in this case and that
14 the sentence was driven by that undue emphasis.

15 Secondly, I would repeat my objection to the
16 verification testing condition. I know I argued it earlier.
17 The argument is that it is an excessive condition. That some
18 of the language improperly delegates influenced judicial
19 authority to the probation department. And also, that one of
11:28:57AM 20 the items of testing that was proposed, computer voice stress
21 analysis, is unreliable.

22 Third, with respect to the computer monitoring
23 condition, in light of the sentence imposed, I would ask the
24 Court to consider deferring the details of that condition
11:29:14AM 25 until such time as Mr. Burdick might actually be released on

1 supervised release. Given the advances of technology, it
2 seems fairly likely, if not very likely, that the contours of
3 whatever program probation has in place for monitoring devices
4 will be very different in 15 to 20 years than it is today.

11:29:37AM 5 And I certainly would object to it being left to whatever the
6 program evolves to within the next 15 to 20 years.

7 With respect to the request that we made in our
8 original sentencing statement, I'd ask the Court to consider
9 recommending that my client be housed as close to the
11:29:56AM 10 Watertown, New York area. That is where his family is based.
11 That also, it recommends to the Bureau of Prisons that he
12 serve his sentence in a facility with a sex offender
13 management program yard, SOMP yard.

14 THE COURT: Now, help me out on that. First of
11:30:13AM 15 all, let me address your concerns. You have your exception as
16 to the truth verification condition the Court imposed.

17 The Court will recommend, pursuant to your request,
18 that he be housed in a suitable Bureau of Prisons facility as
19 close to Watertown as possible.

11:30:31AM 20 With respect to -- the Court is certainly, as I
21 have suggested and detailed, is certainly mindful of, on sex
22 offender cases, the importance of not applying the guidelines
23 roguery. The Court did not do that in this case. The Court,
24 as I indicated and I will tell you to your face, I believe
11:30:50AM 25 this is the appropriate sentence. I told you, Mr. Burdick, I

1 believe you are a predator. You took advantage of a child
2 repeatedly, but you have an exception to the Court's ruling in
3 that regard.

4 I'm sorry. What was the other thing you mentioned?

11:31:07AM 5 MS. BURGER: The way the computer monitoring
6 conditions --

7 THE COURT: Yes, I will -- I'm going to leave it
8 in, but I will give you -- when he does get out, if someone
9 from your office is representing him or whatever, I will give
11:31:21AM 10 leave to have that condition revisited in light of any changes
11 that occur. Anything else?

12 MR. ROSSI: Nothing from me, Judge.

13 THE COURT: Ms. Rider, anything?

14 MS. RIDER: Just one thing, your Honor. Were you
11:31:31AM 15 also going to make the recommendation for the SOMP yard.

16 THE COURT: Yes. Explain -- that's what I wanted
17 to ask you. Explain that to me because we don't have Butner
18 anymore where they sent offenders. So are there certain
19 facilities where these yards are in place? Is the defendant
11:31:52AM 20 eligible for that only after he serves some of his sentence?

21 MS. BURGER: This is not necessarily tied to an
22 inmate participating in a voluntary sex offender treatment
23 program while within the BOP. There are a number of different
24 facilities that, I don't know why, but over the years have
11:32:14AM 25 come to house larger members of individuals who are convicted

1 of sexual offenses. The presence of those larger numbers of
2 individuals in those facilities in some instances, from what I
3 have learned anecdotally, can mean that there are additional
4 services available there. Not strictly speaking regular
11:32:36AM 5 mental health treatment that we might think of, it's something
6 more than what's typically available to the inmate.

7 THE COURT: What is it called?

8 MS. BURGER: SOMP, I think it's short for Sex
9 Offender Management Program, and they call it, yard. In
11:32:49AM 10 addition, this would have the effect of allowing Mr. Burdick
11 to be housed with other individuals who are convicted of
12 similar offenses and would have a bearing, in our view, on
13 safety concerns that he might at another facility.

14 THE COURT: I will recommend -- and again, I'm
11:33:04AM 15 telling you, Mr. Burdick, the Bureau of Prisons does not have
16 to do anything that I recommend. Hopefully, they will look at
17 it. But again, I recommend that, again, you be housed in a
18 suitable Bureau of Prisons facility as close to Rochester as
19 possible and --

11:33:19AM 20 MS. RIDER: Watertown, Judge. I'm sorry.

21 THE COURT: Watertown. Excuse me. And again, I
22 don't know which recommendation trumps the other and be housed
23 in a suitable Bureau of Prisons facility that has a sex
24 offender management program. Now, that may not be close to
11:33:35AM 25 Watertown, Ms. Burger; correct?

1 MS. BURGER: Yes, that's correct.

2 THE COURT: So what --

3 MS. BURGER: I think the BOP will sort that out,
4 Judge.

11:33:45AM 5 THE COURT: All right. Very good. That's the
6 sentence of the Court. Thank you very much.

7 MR. ROSSI: Thank you, Judge.

8 (The proceeding concludes at 11:33 a.m.)

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12 REPORTER CERTIFICATE

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14 I, Briana L. Jeffords, do hereby certify that I did report
15 in stenotype machine shorthand the proceedings held in the
16 above-entitled matter.

17

18 Briana L. Jeffords
19 BRIANA L. JEFFORDS
20 Freelance Court Reporter and
Notary Public No. 01JE6325111
in and for Genesee County, New York

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